

## CHAPTER 76.09 RCW

### FOREST PRACTICES

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**RCW 76.09.010 Legislative finding and declaration.**

- (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.
- (2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive statewide system of laws and forest practices rules which will achieve the following purposes and policies:
  - (a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;
  - (b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;
  - (c) Recognize both the public and private interest in the profitable growing and harvesting of timber;
  - (d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;
  - (e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such rules;
  - (f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;
  - (g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;
  - (h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations;
  - (i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state; and
  - (j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions.
- (3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.
- (4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practices permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources.

**RCW 76.09.020 Definitions.** For purposes of this chapter:

- (1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.
- (2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.
- (3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander

(*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

- (4) "Commissioner" means the commissioner of public lands.
- (5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.
- (6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.
- (7) "Department" means the department of natural resources.
- (8) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future.
- (9) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: PROVIDED, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.
- (10) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:
  - (a) Road and trail construction;
  - (b) Harvesting, final and intermediate;
  - (c) Precommercial thinning;
  - (d) Reforestation;
  - (e) Fertilization;
  - (f) Prevention and suppression of diseases and insects;
  - (g) Salvage of trees; and
  - (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.
- (11) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.
- (12) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.
- (13) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.
- (14) "Application" means the application required pursuant to RCW 76.09.050.
- (15) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

- (16) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.
- (17) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.
- (18) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.
- (19) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.
- (20) "Board" means the forest practices board created in RCW 76.09.030.
- (21) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.
- (22) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

**RCW 76.09.030 Forest practices board--Created--Membership--Terms--Vacancies--Meetings--Compensation, travel expenses--Staff.**

- (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:
  - (a) The commissioner of public lands or the commissioner's designee;
  - (b) The director of the department of community, trade, and economic development or the director's designee;
  - (c) The director of the department of agriculture or the director's designee;
  - (d) The director of the department of ecology or the director's designee;
  - (e) The director of the department of fish and wildlife or the director's designee;
  - (f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and
  - (g) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.
- (2) The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, \*chapter 75.20 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a



- consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.
- (3) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.
  - (4) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.
  - (5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.
  - (6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

**RCW 76.09.040 Forest practices rules--Adoption--Review of proposed rules--Hearings--Riparian open space program.**

- (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:
  - (a) Establish minimum standards for forest practices;
  - (b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;
  - (c) Set forth necessary administrative provisions;
  - (d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and
  - (e) Allow for the development of watershed analyses.

Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

- (2) The board shall prepare proposed forest practices rules. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection. Prior to initiating the rule making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the

counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices rules relating to problems existing within such county. The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

- (3) The board shall establish by rule a riparian open space program that includes acquisition of a fee interest in, or at the landowner's option, a conservation easement on lands within unconfined avulsing channel migration zones. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. Because there are few, if any, comparable sales of forest land within unconfined avulsing channel migration zones, separate from the other lands or assets, these lands are likely to be extraordinarily difficult to appraise and the cost of a conventional appraisal often would be unreasonable in relation to the value of the land involved. Therefore, for the purposes of voluntary sales under this section, the legislature declares that these lands are presumed to have a value equal to:
  - (a) The acreage in the sale multiplied by the average value of commercial forest land in the region under the land value tables used for property tax purposes under \*RCW 84.33.120; plus
  - (b) the cruised volume of any timber located within the channel migration multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091. For purposes of this section, there shall be an eastside region and a westside region as defined in the forests and fish report as defined in RCW 76.09.020.
- (4) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department is directed to purchase a fee interest or, at the owner's option, a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined avulsing channel migration zone. Lands acquired under this section shall become riparian open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.
- (5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.
- (6) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space.

**RCW 76.09.050 Rules establishing classes of forest practices**--Applications for classes of forest practices--Approval or disapproval--Notifications--Procedures--Appeals--Waiver.

- (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

**Class I:** Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

**Class II:** Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

- (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;
- (b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.100;
- (c) Within "shorelines of the state" as defined in RCW 90.58.030;
- (d) Excluded from Class II by the board; or
- (e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

**Class III:** Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

**Class IV:** Forest practices other than those contained in Class I or II:

- (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW,
- (b) on lands that have or are being converted to another use,
- (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development,
- (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:
  - (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or
  - (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or
- (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives



the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

- (2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.
- (3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.
- (4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.
- (5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices

allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

- (6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.
- (7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:
  - (a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and
  - (b) The objections relate to lands either:
    - (i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or
    - (ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

- (8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.
- (9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.
- (10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.
- (11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

**RCW 76.09.055 Findings**--Emergency rule making authorized.

- (1) The legislature finds that the declines of fish stocks throughout much of the state require immediate action to be taken to help restore these fish runs where possible. The legislature also recognizes that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.
- (2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except:
  - (a) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner;
  - (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320;
  - (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and
  - (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting the emergency rules, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. The forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section.

**RCW 76.09.060 Applications for forest practices--Form--Contents--Conversion of forest land to other use--Six-year moratorium--New applications--Approval--Emergencies.** The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

- (1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:
  - (a) Name and address of the forest landowner, timber owner, and operator;
  - (b) Description of the proposed forest practice or practices to be conducted;
  - (c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;
  - (d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

- (e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;
  - (f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;
  - (g) Soil, geological, and hydrological data with respect to forest practices;
  - (h) The expected dates of commencement and completion of all forest practices specified in the application;
  - (i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;
  - (j) An affirmation that the statements contained in the notification or application are true; and
  - (k) All necessary application or notification fees.
- (2) Long range plans may be submitted to the department for review and consultation.
- (3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.
- (a) If the application states that any such land will be or is intended to be so converted:
    - (i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;
    - (ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;
    - (iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.
  - (b) Except as provided elsewhere in this section, if the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:
    - (i) For six years after the date of the application the county, city, town, and regional governmental entities shall deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;
    - (A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the low likelihood of conversion. Not recording the statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.
    - (B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

- (C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.
- (D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.
- (E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.
- (F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;
- (ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and
- (iii) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.
- (c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.
- (4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.
- (5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.
- (6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified



by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

- (7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

**RCW 76.09.063 Forest practices permit--Habitat incentives agreement.** When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in \*RCW 77.12.830, the department shall comply with the terms of that agreement when evaluating the permit application.

**RCW 76.09.065 Forest practices application or notification--Fee.**

- (1) Effective July 1, 1997, an applicant shall pay an application fee and a recording fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.
- (2) For applications and notifications submitted to the department, the application fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:
  - (a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or
  - (b) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.All money collected from fees under this subsection shall be deposited in the state general fund.
- (3) For applications submitted to the local governmental entity, the fee shall be five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided by the local governmental entity.
- (4) Recording fees shall be as provided in chapter 36.18 RCW.
- (5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.

**RCW 76.09.067 Application for forest practices--Owner of perpetual timber rights.**

Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1), 76.09.060(3) (b)(i)(A) and (c), and 76.09.065(2)(a), where timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign the forest practices application and the statement of intent not to convert for a set period of time. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application and the signed statement of intent have been served on the forest landowner.

**RCW 76.09.070 Reforestation--Requirements--Procedures--Notification on sale or transfer.** After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: PROVIDED, That:

- (1) A longer period may be authorized if seed or seedlings are not available;
- (2) a period of up to five years may be allowed where a natural regeneration plan is approved by the department; and
- (3) the department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights. If the seller fails to notify the buyer about the reforestation obligation, the seller shall pay the buyer's costs related to reforestation, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation, that the seller did not notify the buyer of the reforestation obligation prior to sale.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: PROVIDED, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances.

**RCW 76.09.080 Stop work orders--Grounds--Contents--Procedure--Appeals.**

- (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:
  - (a) There is any violation of the provisions of this chapter or the forest practices regulations; or
  - (b) There is a deviation from the approved application; or
  - (c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.
- (2) The stop work order shall set forth:
  - (a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
  - (b) An order to stop all work connected with the violation, deviation, damage, or potential damage;
  - (c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and
  - (d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

**RCW 76.09.090 Notice of failure to comply--Contents--Procedures--Appeals--Hearing--Final order--Limitations on actions.** If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

- (1)
  - (a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or
  - (b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;
- (2) The right of the operator or land owner to a hearing before the department; and
- (3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action

necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

**RCW 76.09.100 Failure to comply with water quality protection**--Department of ecology authorized to petition appeals board--Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**RCW 76.09.110 Final orders or final decisions binding upon all parties.** Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties.

**RCW 76.09.120 Failure of owner to take required course of action**--Notice of cost--Department authorized to complete course of action--Liability of owner for costs--Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land

owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

**RCW 76.09.130 Failure to obey stop work order**--Departmental action authorized--Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120.

**RCW 76.09.140 Enforcement.**

- (1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170, for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer. For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent. While the notice of intent to disapprove is in effect, the violator may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.
- (2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to: Seeking penalties, interest, costs, and attorneys' fees; enforcing final orders or decisions; and seeking civil injunctions, show cause orders, or contempt orders.
- (3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices rules or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by



the county of a violation of the forest practices rules or final orders of the department or the appeals board.

- (4) (a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:
  - (i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;
  - (ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or
  - (iii) Failed to pay any civil or criminal penalty.
- (b) The department may deny any application for failure to submit financial assurances as required.

**RCW 76.09.150 Inspection--Right of entry.**

- (1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.
- (2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.
- (3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:
  - (a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or
  - (b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.
- (4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**RCW 76.09.160 Right of entry by department of ecology.** Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420.

**RCW 76.09.170 Violations--Conversion to nontimber operation--Penalties--Remission or mitigation--Appeals--Lien.**

- (1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand

dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

- (2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:
  - (a) Previous violation history;
  - (b) Severity of the impact on public resources;
  - (c) Whether the violation of this chapter or its rules was intentional;
  - (d) Cooperation with the department;
  - (e) Repairability of the adverse effect from the violation; and
  - (f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and has not received substantial economic benefits from the violation.
- (3) The penalty in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.
- (4) Any person incurring a penalty under this section may appeal the penalty to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.
- (5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.
- (6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an

action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

- (7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.
- (8) Any person incurring a penalty imposed under this section is also responsible for the payment of all costs and attorneys' fees incurred in connection with the penalty and interest accruing on the unpaid penalty amount.

**RCW 76.09.180 Disposition of moneys received as penalties, reimbursement for damages.** All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of fish and wildlife, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142.

**RCW 76.09.190 Additional penalty, gross misdemeanor.** In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

**RCW 76.09.210 Forest practices appeals board--Created--Membership--Terms--Vacancies--Removal.**

- (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.
- (2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.
- (3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of

the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

- (4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.
- (5) Each member of the appeals board:
  - (a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and
  - (b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter.

**RCW 76.09.220 Forest practices appeals board--Compensation--Travel expenses--Chair--Office--Quorum--Powers and duties--Jurisdiction--Review.**

- (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.
- (2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.
- (3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.
- (4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.
- (5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

- (6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.
- (7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.
- (8)
  - (a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requester shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.
  - (b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

**RCW 76.09.230 Forest practices appeals board--Mediation--Appeal procedure--Judicial review.**

- (1) In all appeals over which the appeals board has jurisdiction, upon request of one or more parties and with the consent of all parties, the appeals board shall promptly schedule a conference for the purpose of attempting to mediate the case. The mediation conference shall be held prior to the hearing on not less than seven days' advance written notice to all parties. All other proceedings pertaining to the appeal shall be stayed until completion of mediation, which shall continue so long as all parties consent: PROVIDED, That this shall not prevent the appeals board from deciding motions filed by the parties while mediation is ongoing: PROVIDED, FURTHER, That discovery may be conducted while mediation is ongoing if agreed to by all parties. Mediation shall be conducted by an administrative appeals judge or other duly authorized agent of the appeals board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the appeals board. A person who mediates in a particular appeal shall not participate in a hearing on that appeal or in writing the decision and order in the appeal. Documentary and other physical evidence presented and evidence of conduct or statements made during the course of mediation shall be treated by the mediator and the parties in a confidential manner and shall not be admissible in subsequent proceedings in the appeal except in accordance with the provisions of the Washington rules of evidence pertaining to compromise negotiations.
- (2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.
- (3) In all appeals the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.
- (4) All proceedings before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.



- (5) Judicial review of a decision of the appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598.

**RCW 76.09.240 Class IV forest practices**--Counties and cities adopt standards--Administration and enforcement of regulations--Restrictions upon local political subdivisions or regional entities--Exceptions and limitations.

- (1) By December 31, 2005, each county and each city shall adopt ordinances or promulgate regulations setting standards for those Class IV forest practices regulated by local government. The regulations shall: (a) Establish minimum standards for Class IV forest practices; (b) set forth necessary administrative provisions; and (c) establish procedures for the collection and administration of forest practices and recording fees as set forth in this chapter.
- (2) Class IV forest practices regulations shall be administered and enforced by the counties and cities that promulgate them.
- (3) The forest practices board shall continue to promulgate regulations and the department shall continue to administer and enforce the regulations promulgated by the board in each county and each city for all forest practices as provided in this chapter until such time as, in the opinion of the department, the county or city has promulgated forest practices regulations that meet the requirements as set forth in this section and that meet or exceed the standards set forth by the board in regulations in effect at the time the local regulations are adopted. Regulations promulgated by the county or city thereafter shall be reviewed in the usual manner set forth for county or city rules or ordinances. Amendments to local ordinances must meet or exceed the forest practices rules at the time the local ordinances are amended.
- (a) Department review of the initial regulations promulgated by a county or city shall take place upon written request by the county or city. The department, in consultation with the department of ecology, may approve or disapprove the regulations in whole or in part.
- (b) Until January 1, 2006, the department shall provide technical assistance to all counties or cities that have adopted forest practices regulations acceptable to the department and that have assumed regulatory authority over all Class IV forest practices within their jurisdiction.
- (c) Decisions by the department approving or disapproving the initial regulations promulgated by a county or city may be appealed to the forest practices appeals board, which has exclusive jurisdiction to review the department's approval or disapproval of regulations promulgated by counties and cities.
- (4) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:
- (a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

- (b) Taxing powers;
- (c) Regulatory authority with respect to public health; and
- (d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971".

**RCW 76.09.250 Policy for continuing program of orientation and training.** The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280.

**RCW 76.09.260 Department to represent state's interest--Cooperation with other public agencies--Grants and gifts.** The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. \_

**RCW 76.09.270 Annual determination of state's research needs--Recommendations.** The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature.

**RCW 76.09.280 Removal of log and debris jams from streams.** Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies.

**RCW 76.09.285 Water quality standards affected by forest practices.** See RCW 90.48.420.

**RCW 76.09.290 Inspection of lands--Reforestation.** The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation.

**RCW 76.09.300 Mass earth movements and fluvial processes--Program to correct hazardous conditions on sites associated with roads and railroad grades--Hazard-reduction plans.**

- (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on forest lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

- (2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:
  - (a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: PROVIDED, That no liability shall attach to the state of Washington or the department for failure to identify such sites;
  - (b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;
  - (c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.
- (3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.
- (4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.
- (5) Unless requested by a forest landowner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320.

**RCW 76.09.305 Advisory committee to review hazard-reduction plans authorized--**

Compensation, travel expenses. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

**RCW 76.09.310 Hazard-reduction program--**Notice to landowners within areas selected for review--Proposed plans--Objections to plan, procedure--Final plans--Appeal.

- (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.
- (2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.
- (3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.
- (4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

- (5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.
- (6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.
- (7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.
- (8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county.

**RCW 76.09.315 Implementation of hazard-reduction measures--Election--Notice and application for cost-sharing funds--Inspection--Letter of compliance--Limitations on liability.**

- (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.
- (2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed, arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed. The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.
- (3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 \_ 5.]

**RCW 76.09.320 Implementation of hazard-reduction program--Cost sharing by department--Limitations.**

- (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.
- (2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one

hundred percent of the cost of implementation of the department's recommended actions on his property.

- (3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule.

**RCW 76.09.330 Legislative findings--**Liability from naturally falling trees required to be left standing. The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forest landowners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages of any kind or character resulting from the trees being left.

**RCW 76.09.340 Certain forest practices exempt from rules and policies under this chapter.**

Forest practices consistent with a habitat conservation plan approved prior to March 25, 1996, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species, including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050. Nothing in this section is intended to limit the board's rule-making authority under this chapter.

**RCW 76.09.350 Long-term multispecies landscape management plans--**Pilot projects, selection--Plan approval, elements--Notice of agreement recorded--Memorandums of agreements--Report, evaluation. The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the



state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

- (1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.
  - (a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.
  - (b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.
  - (c) Each pilot project shall have a landscape management plan with the following elements:
    - (i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;
    - (ii) A termination date of not later than 2050;
    - (iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;
    - (iv) An identification of the existing forest practices rules that will not apply during the term of the plan;
    - (v) Proposed habitat management strategies or prescriptions;
    - (vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;
    - (vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;
    - (viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;
    - (ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;
    - (x) A monitoring plan;
    - (xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;
    - (xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

- (xiii) Conditions under which a plan may be terminated;
  - (xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;
  - (xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and
  - (xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.
- (2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:
- (a) The plan contains all of the elements required under this section including measurable public resource objectives;
  - (b) The plan is expected to be effective in meeting those objectives;
  - (c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;
  - (d) The plan will:
    - (i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and
    - (ii) Compared to conditions that could result from compliance with current state law:
      - (A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and
      - (B) Measurably improve habitat conditions for species selected for special consideration under the plan;
  - (e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;
  - (f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the management plan is subject to the environmental

review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

- (3) After a landscape management plan is adopted:
  - (a) Forest practices consistent with the plan need not comply with:
    - (i) The specific forest practices rules identified in the plan; and
    - (ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:
      - (A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or
      - (B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and
  - (b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with \*RCW 75.20.100.
- (4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.
- (5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.
- (6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not

adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

- (7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary.

**RCW 76.09.360 Single multiyear permit.** The department together with the department of fish and wildlife, and the department of ecology relating to water quality protection, shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices in a single multiyear permit to be jointly issued by the departments and the departments shall report their findings to the legislature not later than December 31, 2000.

**RCW 76.09.368 Intent--Small forest landowners--Alternate plan processes/alternate harvest restrictions--Report to the legislature.** The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370 (3), but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the small forest landowner office advisory committee in developing these alternate approaches. By July 1, 2003, the forest practices board shall provide the legislature with a written report that describes the board's progress in developing alternate plan processes or alternate harvest restrictions, or both if necessary, that meet legislative intent.

As used in this section, "small forest landowner" has the same meaning as defined in RCW 76.13.120(2).

**RCW 76.09.370 Findings--Forests and fish report--Adoption of rules.**

- (1) The legislature finds that the process that produced the forests and fish report was instigated by the forest practices board, the report is the product of considerable negotiations between several diverse interest groups, and the report has the support of key federal agencies. When adopting permanent rules under this section, the forest practices board is strongly encouraged to follow the recommendations of the forests and fish report, but may include other alternatives for protection of aquatic resources. If the forest practices board chooses to adopt rules under this section that are not consistent with the recommendations contained in the forests and fish report, the board must notify the appropriate legislative committees of the proposed deviations, the reasons for the proposed deviations, and whether the parties to the forests and fish report still support the agreement. The board shall defer final adoption of such rules for sixty days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.
- (2) The forest practices board shall follow the regular rules adoption process contained in the administrative procedure act, chapter 34.05 RCW, when adopting permanent rules pertaining to forest practices and the protection of aquatic resources except as limited by subsection (1) of this section. The permanent rules must accomplish the policies stated in RCW 76.09.010 without jeopardizing the economic viability of the forest products industry.
- (3) The rules adopted under this section should be as specific as reasonably possible while also allowing an applicant to propose alternate plans in response to site-specific physical features.

Alternate plans should provide protection to public resources at least equal in overall effectiveness by alternate means.

- (4) Rule making under subsection (2) of this section shall be completed by June 30, 2001.
- (5) The board should consider coordinating any environmental review process under chapter 43.21C RCW relating to the adoption of rules under subsection (2) of this section with any review of a related proposal under the national environmental policy act (42 U.S.C. Sec. 4321, et seq.).
- (6) After the board has adopted permanent rules under subsection (2) of this section, changes to those rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.
- (7) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery.

**RCW 76.09.380 Report to the legislature--Emergency rules--Permanent rules.** Prior to the adoption of permanent rules as required by chapter 4, Laws of 1999 sp. sess. and no later than January 1, 2000, the board shall report to the appropriate legislative committees regarding the substance of emergency rules that have been adopted under chapter 4, Laws of 1999 sp. sess. In addition, the report shall include information on changes made to the forests and fish report after April 29, 1999, and an update on the status of the adoption of permanent rules, including the anticipated substance of the rules and the anticipated date of final adoption. The board shall additionally provide a report to the appropriate legislative committees by January 1, 2001. On January 1, 2006, the board shall provide a summary to the appropriate legislative committees regarding modifications made to the forests and fish report made after January 1, 2000, and to the permanent rules according to the adaptive management process as set forth in the forests and fish report.

**RCW 76.09.390 Sale of land or timber rights with continuing obligations--Notice--Failure to notify.** Prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the forest practices rules adopted under RCW 76.09.370, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forest land obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forest land obligation, the seller shall pay the buyer's costs related to such continuing forest land obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the



seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale.

**RCW 76.09.400 Forests and fish account--Created.** The forests and fish account is created in the state treasury. Receipts from appropriations, federal grants, and gifts from private organizations and individuals or other sources may be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the establishment and operation of the small forest landowner office under RCW 76.13.110, the purchase of easements under RCW 76.13.120, the purchase of lands under RCW 76.09.040, or other activities necessary to implement chapter 4, Laws of 1999 sp. sess.

**RCW 76.09.900 Short title.** Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974".

**RCW 76.09.905 Air pollution laws not modified.** Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 \_ 31.]

**RCW 76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified--Exceptions.** Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (\*RCW 75.20.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended.

**RCW 76.09.915 Repeal and savings.**

- (1) The following acts or parts of acts are each repealed:
- (a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;
  - (b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;
  - (c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;
  - (d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;
  - (e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;
  - (f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;
  - (g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;
  - (h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and
  - (i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

- (2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified.

**RCW 76.09.920 Application for extension of prior permits.** Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975.

**RCW 76.09.925 Effective dates--**1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975.

**RCW 76.09.935 Severability--**1974 ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected.